

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

RECEIVED

MAR 27 1995

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY,

Complainant,

v.

NORTHWOODS ORGANICS, INC.,

and

FAULK BROS. CONSTRUCTION, INC.,

Respondents.

REGIONAL HEARING

CLERK

Proceeding to Assess a  
Class II Administrative  
Penalty under Section  
309(g) of the Clean Water  
Act, 33 U.S.C. 1319(g)  
and Order pursuant to  
309(a) of the Clean Water  
Act, 33 U.S.C. § 1319(a)

Docket No. 5-CWA-95-005

CONSENT AGREEMENT AND FINAL ORDER

I. Statutory Authority

The following Findings are made and Consent Agreement and Final Order issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("U.S. EPA") by Sections 309(a) and (g) of the Clean Water Act, 33 U.S.C. § 1319(a) and (g), ("CWA" or the "Act"). The Administrator has delegated this authority to the Regional Administrator, U.S. EPA, Region 5, who hereby issues the Final Order pursuant to 40 C.F.R. § 22.38.

1. Complainant, Director, Water Division, Region 5, U.S. EPA, initiated a civil administrative action for the assessment of a civil penalty, pursuant to Section 309(g) of the Clean Water Act ("the Act"), 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, by issuing a Complaint against the Respondents, NorthWoods Organics, Inc., and Faulks Bros. Construction, Inc., on March 16, 1995.

Copy to  
Bev  
3/28  
\$63,000  
80054395016

2. Section 404(a) of the CWA, 33 U.S.C. § 1344(a), authorizes the Secretary of the Army, acting through the Chief of Engineers, United States Army Corps of Engineers, to issue permits for the discharge of dredged or fill material into navigable waters of the United States.

3. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters of the United States except in compliance with, inter alia, a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344.

4. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the point source discharge of pollutants by any person into a navigable water except in compliance with, among other things, the terms and conditions of a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

5. Section 502(5) of the CWA defines "person" as an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body. 33 U.S.C. § 1362(5).

6. Section 502(6) of the CWA defines "pollutant," as "dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water." 33 U.S.C. § 1362(6).

7. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines "navigable waters," in part, as the waters of the United States.

8. Section 502(12) of the CWA defines "discharge of pollutants," as any addition of any pollutant to navigable waters from any point source, or any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft. 33 U.S.C. § 1362(12).

9. Section 502(14) of the CWA defines "point source," as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged." 33 U.S.C. § 1362(14).

10. "Wetlands" are defined at 40 C.F.R. § 232.2(r) as those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

11. "Waters of the United States" are defined at 40 C.F.R. § 232.2(q)(7) and include wetlands.

## II. Findings of Violation

Upon consent of the parties by their authorized officials, the parties stipulate and the Administrator finds that:

12. The Respondents in this proceeding are NorthWoods Organics, Inc., 4115 Meadow Parkway--Unit C, Hermantown,

Minnesota 55811, and Faulks Bros. Construction, Inc., East 3481, Highway 22 and 54, Waupaca, Wisconsin 54981.

13. The Respondents are "persons" within the meaning of the definition set forth in Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

14. At all times relevant to this complaint, the Respondents owned and/or operated a peat-mining business which leased from the St. Louis County, Land Department (Lease No. C21920001), a wetland approximately 2½ miles south of Toivola, Minnesota (hereinafter referred to as "the Site"). The Site is located in Sections 30 and 31, Township 54N, Range 19W, St. Louis County, Minnesota, on which approximately 1,300 acres of wetlands are located.

15. There are wetlands and waters on the Site which drain into Pirtala Creek which drains into the St. Louis River which subsequently flows into Lake Superior, an interstate and international waterbody.

16. From January 1993 to June 10, 1994, Respondents, and/or persons acting on behalf of the Respondents, used bulldozers, backhoes, chainsaws and other heavy equipment to discharge mud, peat moss, gravel, plastic, tree stumps and corrugated pipe into approximately 135 acres of wetlands located on the Site without a permit as required by Section 404 of the Act, 33 U.S.C. § 1344.

17. In January 1994, the Respondents, and/or persons acting on behalf of the Respondents, used bulldozers, backhoes, chainsaws and other heavy equipment to discharge mud, peat moss,

gravel, plastic, tree stumps and corrugated pipe into an additional 100 acres of wetlands directly adjacent to and west of the previously excavated/filled 135 acres of wetlands referenced in paragraph 16 above, without a permit as required by Section 404 of the Act, 33 U.S.C. § 1344.

18. The mud, peat moss, gravel, plastic, tree stumps and corrugated pipe referenced in paragraphs 16 and 17, above, constitute "pollutants" within the meaning of the definition set forth in Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

19. The bulldozers, backhoes, chainsaws and other heavy equipment referenced in paragraphs 16 and 17, above, constitute "point sources" within the meaning of the definition set forth in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

20. The placement of the mud, peat moss, gravel, plastic, tree stumps and corrugated pipe into the wetlands referenced in paragraph 16 and 17, above, constitutes a "discharge of pollutants" within the meaning of the definition set forth in Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

21. Respondents did not have a permit issued under Section 404 of the CWA, 33 U.S.C. § 1344, for the discharge of pollutants into waters of the United States as referenced in paragraph 16 and 17, above.

22. Each day that Respondents discharged pollutants onto wetlands at the Site referenced in paragraphs 16 and 17, without the required permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, constitutes a day of violation of Section 301

of the CWA, 33 U.S.C. § 1311.

23. Each day that the pollutants discharged by the Respondents remain on the wetlands at the Site without the required permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, constitutes a day of violation of Section 301 of the CWA, 33 U.S.C. § 1311.

24. Each day that Respondents violate Section 301 of the CWA subjects them to an assessment of a civil penalty of up to \$10,000 per day for each day during which the violation continue, up to a maximum \$125,000, pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B).

25. Respondent NorthWoods Organics operates a wastewater disposal system that discharged pollutants into the Pirtala Creek in the State of Minnesota.

26. The Pirtala Creek is a "navigable water" as that term is defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

27. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, NPDES Permit No. MN 0061549 (the "Permit") was issued to Respondent NorthWoods Organics on March 10, 1993, by the Minnesota Pollution Control Agency (MPCA). The Permit became effective on March 10, 1993, was modified and became effective on April 6, 1994 and will expire on December 31, 1997.

28. The Permit authorizes the Respondent NorthWoods Organics to, among other things, discharge pollutants to Pirtala Creek from the South Toivola Mining Area, in portions of Sections 30 and 31, Township 54N, Range 19W, Toivola Township, St. Louis

County, Minnesota.

29. For the period from April 14, 1993, through July 1994, Respondent NorthWoods Organics failed to comply with the following:

- a. the Permit effluent limitations from outfall 020 for Ph, Total Aluminum, and Total Iron as set forth at Part I, Section B.1, and listed in counts 1-36 in the Table of Violations (TOV), Exhibit A.
- b. the Permit Reporting requirements for Permit Limit Exceedances as set forth in Part II.A.3.; and listed in counts 37-44 in the TOV.
- c. the Permit Monitoring requirements as set forth at Part I. Section B.1, and listed in counts 45 and 46 in the TOV.

30. Respondent NorthWoods Organic's failure to comply with the Permit effluent limitations and reporting requirements cited in Paragraph 29 constitutes 436 violations of the terms and conditions of the Permit and of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

### III. Consent Agreement

The parties HEREBY AGREE that:

31. Respondents shall pay a civil penalty of SIXTY-THREE THOUSAND DOLLARS (\$63,000.00). Payment shall be made by certified or cashier's check made payable to the "TREASURER, UNITED STATES OF AMERICA" within sixty (60) days of the effective date of this Consent Agreement and Final Order. The Check shall

be forwarded to: U.S. Environmental Protection Agency  
Region 5  
P.O. Box 70753  
Chicago, IL 60673

32. Within ten (10) days after payment of the penalty set forth in paragraph 31, Respondents shall report and submit a copy

of the check to: Mr. Robert Cvengros (WQW-16J)  
Enforcement Officer  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

Chief, Compliance Section (WC-15J)  
Water Division  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

33. Copies of all such checks shall also be mailed to the Regional Hearing Clerk (MF-10J); to Stephen P. Mendoza, Chief, Air Water Toxics and General Law Section, Mail Code C-29A; and to the Unit Secretary, Wetlands Regulatory Unit, (WQW-16J), all of whom are located at the U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590.

34. Interest shall accrue on any penalty amounts overdue under the terms of this Consent Agreement and Final Order at the rate established by the Secretary of the Treasury, pursuant to 31 U.S.C. § 3717. A late payment handling charge of \$15.00 will be imposed after thirty days, with an additional charge of \$15.00 for each subsequent thirty day period over which an unpaid balance remains. In addition, a six (6) percent per annum penalty will be assessed on any principal amount not paid within ninety (90) days of the effective date of this Consent Agreement



and Final Order.

35. The terms used in this Consent Agreement and Final Order shall have the same meaning as those contained in the Act, specifically those definitions established in Section 502 of the Act, 33 U.S.C. § 1362, and the regulations found at 40 C.F.R. § 232.2.

36. The provisions of this Consent Agreement and Final Order shall be binding upon the Respondents and its officers.

37. Issuance of this Final Order shall be in full settlement of, and shall release Respondents of all claims arising out of the factual circumstances which were the subject of the Administrative Complaint filed in this case.

38. This Consent Agreement and Final Order does not constitute a permit or a license and does not relieve Respondents of their obligation to comply with all applicable federal, state, and local laws and regulations, including, but not limited, to any Section 404 permit and NPDES Permit.

39. Respondents neither admit nor deny the allegations set forth in the Complaint.

40. Respondents waive their right to a hearing as provided by Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. § 22.15(c).

41. Respondents shall submit, for U.S. EPA review and approval, a final reclamation plan for the 135 acre parcel referenced in paragraph 16 within 30 days from the effective date of this Final Order. Work under the approved reclamation plan

for the 135 acre parcel will commence 30 days from the cessation and/or completion of all mining operations at the site. This reclamation plan pertains only to this 135 acre parcel. If Respondents receive a Section 404 permit for peat mining at the Site which permits peat mining beyond the 135 acre parcel referenced in paragraph 16, then Respondents shall submit additional reclamation plans within 30 days of the effective date of such permit. These future reclamation plans will encompass and/or adopt at a minimum, the previous, hydrologic, vegetative, habitat and management goals of the previously approved (135 acre) reclamation plan.

42. Respondents shall immediately backfill (plug) with the contents of sphagnum and/or reed sedge peat all out-flowing ditches, for a minimum length of 150 feet, on the west 100 acre parcel referenced in paragraph 17. The plugging of these ditches shall be completed within 30 days from the date of this Order. The Respondents shall submit photos and videotape that verifies that these ditches have been sufficiently plugged to a level equal to that of the adjacent contours of the site. In addition, the Respondents will maintain these ditch plugs to ensure their permanency and that their contours remain equal to that of the adjacent contours of the site.

43. This Consent Agreement and Final Order constitutes the entire agreement between Complainant and Respondent.


44. Each of the undersigned representatives of Complainant and the Respondents certifies that he is authorized, by the party

whom he represents, to enter into the terms and conditions of this Consent Agreement and Final Order.

45. The parties hereby consent to the entry of this Consent Agreement and Final Order without further notice.

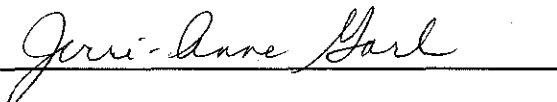
NORTHWOODS ORGANICS, INC. and  
FAULK BROS. CONSTRUCTION, INC.

Dated: 3.17.95

  
ROBERT FAULKS, VICE PRESIDENT

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 5

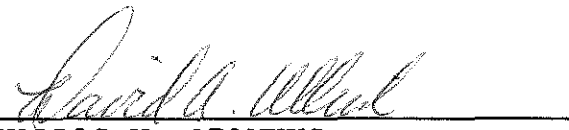
Dated: 3-22-95

  
Acting Director, Water Division  
U.S. Environmental Protection  
Agency, Region 5

FINAL ORDER

IT IS SO ORDERED, as agreed to by the parties and as stated in the Consent Agreement. This Order disposes of In the Matter of NorthWoods Organics, Inc. and Faulks Bros. Construction, Inc., Docket No. 5-CWA-95-005, pursuant to 40 C.F.R. 22.18. This order shall become effective immediately.

Dated: 3/24/95

  
VALDAS V. ADAMKUS  
Regional Administrator